IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 721 OF 2003

Bajirao Dhondiba Chavan
& Ors. . .. Petitioners.

vs.

Laxman Mahadu Sarak
& Ors. .. Respondents.

Mr. Sandesh D. Patil for petitioners.

CORAM : S.U. KAMDAR, J.

DATE : 28th November, 2005.

P.C.:

. The present petition is filed challenging the order dated 31.12.2002 passed by the Additional Commissioner, Konkan Division, in Appeal No. 155 of 2001. The order has been passed under Section 36 and 36A of the Maharashtra Land Revenue Code, 1966 read with Section 4 of the Maharashtra Restoration of Land to the Schedule Tribes Act, 1974. By the impugned order, the order passed by the Tahasildar, Bhiwandi dated 29.9.2001 has been confirmed. By the said order, the Tahasildar has held that the petitioners are liable to deliver possession of the

property bearing Survey No. 48 Hissa No. 26 Area 0-05-8 acre to the respondent no. 1. The Circle Officer, Bhiwandi has been appointed to give the possession of the land to the respondent no. 1. Earlier the respondent had filed a suit being Regular Civil Suit No. 630 of 1989 for injunction and the said suit was dismissed on the ground that the petitioners are in permissive possession of the suit property. In the said property, the petitioners claimed tenancy. In that view of the matter, the present proceedings were taken out for restoration of the land in favour of the respondent herein. The respondent no. 1 is covered by the provisions of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1974. Under Section 4 thereof a Collector is competent to initiate action for restoration of land by holding that certain transfer or encumbrances claimed by a non-tribal in possession is raised and land is liable to be restored to the tribal.

2. The first contention advanced by the learned counsel for the petitioners is that the respondent has not produced a valid caste certificate to show that he is a tribal and thus entitled to the protection of the said Act. The said contention was advanced on the basis that a caste certificate is not valid unless it is scrutinised by Scrutiny Committee in accordance with the judgment of Kumari

Madhuri Patil Vs. Additional Commissioner, Tribal Development reported in 1997 5 SCC 437. The said objection does not survive any further in view of the fact that the respondent has produced a valid caste certificate as recorded in the order dated 21.10.2005 passed in the present writ petition by Chandrachud, J. However, the learned counsel for the petitioner has contended that in view of the fact that the petitioners' possession of the property was only permissive and there was no transfer of any right in the said property in their favour by the respondent, the provisions of the Maharashtra Restoration of Land to the Schedule Tribes Act, 1974 could not have been invoked by the authorities below and restoration of possession could not have been granted. The learned counsel for the petitioners further contended that the authorities below had no jurisdiction to exercise the power under section 36 and 36A of the Maharashtra Land Revenue Code, 1966 read with Section 4 of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1974. In my opinion, the aforesaid contention has no merit. In the civil suit filed by the respondent the petitioners had claimed tenancy and in light of the claim of the petitioners, the proceedings have been initiated for declaration that the so called claim of tenancy is invalid and that the property could not be transferred or alienated in view of the provision of

the said Act. In my opinion the intention of the Legislature in enacting the provision of the said Act is to restore the land to tribal which are taken away from them. In view thereof under Section 4 it has been provided that a land can be restored to tribal even if any person is claiming to have purchased the land or claiming to have acquired the same under relevant tenancy laws. In my opinion if the petitioner is claiming no right or title in the property but claiming mere permissive possession of the said property then a right of such a person is not higher than a transferee and thus the land can be restored to the tribal in exercise of power under Section 4 of the said Act. In any event, I do not find it appropriate to exercise writ jurisdiction under Article 226 and 227 for preventing the tribal to obtain his land on behalf of a person who himself admits that he has no right, title and interest therein but claims mere permissive possession of the land. In view thereof the writ petition fails and accordingly dismissed. No order as to costs.

3. The learned counsel appearing for the petitioners seeks extension of the interim order which was in force during the pendency of the petition. Interim order is continued for a period of four weeks.